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8 UNITED STATES DISTRICT COURT
9 SOUTHERN DISTRICT OF CALIFORNIA
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11 KATHLEEN A. OVERS,) Civil No. 11cv00507 WQH(RBB)
12)
13 Plaintiff,) **REPORT AND RECOMMENDATION**
14 v.) **GRANTING IN PART AND DENYING**
15) **IN PART PLAINTIFF'S MOTION FOR**
16) **SUMMARY JUDGMENT [ECF NO. 8]**
MICHAEL J. ASTRUE, Commissioner) **AND GRANTING DEFENDANT'S**
of Social Security,) **MOTION FOR REMAND [ECF NO. 9]**
15)
16 Defendant.)
_____)

17 On March 14, 2011, Plaintiff Kathleen A. Overs filed a
18 Complaint against Defendant Michael J. Astrue, Commissioner of
19 Social Security, for Review and Remedy on Administrative Decision
20 Under the Social Security Act [ECF No. 1]. Overs challenges the
21 denial of her claim for disability insurance benefits. (Compl. 1,
22 ECF No. 1.) Defendant filed an Answer to Complaint on September
23 27, 2011 [ECF No. 5], and filed the Administrative Record the same
24 day [ECF No. 6]. On January 30, 2012, Plaintiff's Motion for
25 Summary Judgment was filed, along with a Memorandum of Points and
26 Authorities [ECF No. 8]. Defendant filed a Motion for Remand and
27 Opposition to Plaintiff's Motion for Summary Judgment on February
28 23, 2012, along with a Memorandum of Points and Authorities [ECF

1 No. 9]. Astrue refiled the same Motion for Remand and Opposition
2 to Plaintiff's Motion for Summary Judgment again on February 26,
3 2012, along with the same Memorandum of Points and Authorities;
4 however, it was docketed as a "Response in Opposition re 8
5 [Plaintiff's] Motion for Summary Judgment" [ECF No. 10].

6 The Court finds this matter is suitable for decision without
7 oral argument. See S.D. Cal. Civ. R. 7.1(d)(1). For the reasons
8 set forth below, the Court recommends that the district court **GRANT**
9 in part and **DENY** in part Plaintiff's Motion for Summary Judgment
10 [ECF No. 8], and **GRANT** Defendant's Motion for Remand [ECF No. 9].

11 I. MEDICAL EVIDENCE

12 On January 25, 2007, Plaintiff was evaluated at the San Diego
13 County Psychiatric Hospital by Dr. Young Ho Kang, the staff
14 psychiatrist. (Admin. R. Attach. #7, 234-37, ECF No. 6.) Overs
15 reported feeling depressed and anxious, as well as having
16 difficulty sleeping. (Id. at 234.) Plaintiff's depression
17 initially stemmed from a sexual assault that occurred more than
18 twenty years ago. (Id.) At the time of the assault, Plaintiff
19 claimed that she was forced into the bedroom of a police officer
20 who she was dating when two other police officers arrived; all
21 three officers participated in the sexual assault. (Id.) In
22 addition to her lingering depression from the incident, Plaintiff
23 stated that her depression had recently intensified because she was
24 terminated from her job at a bakery. (Id.) According to Overs,
25 she was fired after reporting to her supervisor that a fellow
26 employee had sexually fondled her. (Id.) Dr. Kang noted that the
27 subsequent assault brought back the sexual trauma and left
28 Plaintiff feeling scared, frustrated, helpless, and resentful.

1 (Id. at 234, 236.) Overs asserted she was experiencing additional
2 stress because her husband had been injured at work, causing
3 financial strain on the couple and ultimately leading them to
4 declare bankruptcy. (Id.)

5 At the time of her evaluation by Dr. Kang, Overs was not
6 taking any medication to treat her depression. (Id. at 234.) The
7 doctor noted that Plaintiff was visibly sad, frustrated, and
8 helpless, and he diagnosed her with post-traumatic stress disorder
9 ("PTSD"). (Id. at 235.) Dr. Kang prescribed Prozac and Trazodone
10 for Overs, and he instructed her to pursue outpatient psychiatric
11 care. (Id. at 237.)

12 On March 14, 2007, the Plaintiff was evaluated at San Diego
13 County Mental Health Services by Dr. Majid Naficy, a staff
14 psychiatrist. (Id. at 241-44.) Again, she reported feeling
15 depressed and anxious, as well as having flashbacks and feelings of
16 terror related to her history of sexual abuse. (Id. at 241-42.)
17 Specifically, Overs asserted that she frequently had nightmares
18 involving multiple men trying to harm her. (Id. at 241.) The
19 Plaintiff also complained that her anxiety caused her chest pain,
20 shortness of breath, and sensations of having a heart attack. (Id.
21 at 242.) Overs told Dr. Naficy that she had been prescribed Prozac
22 but never had formal psychiatric treatment. (Id.) Plaintiff also
23 indicated that she had taken the Prozac and noticed good results;
24 she stopped the medication, however, after four weeks because she
25 feared that it was aggravating her myotonia. (Id.) Dr. Naficy
26 observed that Overs was calm and cooperative during the meeting,
27 but her "affect was labile" when discussing her past sexual abuse
28 (Id. at 243.)

1 On June 29, 2007, Dr. Sandra M. Eriks treated Plaintiff for
2 myotonia, which caused her muscle pain and weakness in her legs,
3 neck, lower back, side, and arms. (Id. at 297.) Overs also
4 complained of pain and numbness in her wrists, hands, ankles, and
5 feet. (Id.) The pain was purportedly exacerbated by cold
6 temperature, exercise, and standing or sitting for any period of
7 time. (Id.) In her notes, Dr. Eriks indicated that Plaintiff "is
8 currently taking no medications." (Id.) Yet, another time, the
9 doctor lists Prozac, Clonazepam, and Trazodone as medications Overs
10 was currently taking. (Id. at 298.) Dr. Eriks determined that
11 Plaintiff could lift and carry thirty pounds occasionally and
12 twenty pounds frequently; she could sit, stand, or walk six hours
13 in an eight-hour workday. (Id. at 300.) Finally, the doctor
14 concluded that Overs could occasionally climb, stoop, kneel, and
15 crouch, and that she had no manipulative, visual, communicative, or
16 environmental limitations. (Id.)

17 Plaintiff, on August 24, 2007, sought treatment at the Sharp
18 Memorial Hospital emergency room, complaining of facial pain and
19 numbness that she had been experiencing for the past month. (Id.
20 at 333.) She also complained of headaches on the left side of her
21 forehead. (Id.) Overs was examined by Susan Rhineland, a nurse
22 practitioner. (Id.) Plaintiff reported that she had been
23 prescribed Prozac, Trazodone, Klonopin, and Carbamazepine. (Id. at
24 335.) Yet, she had never taken the Carbamazepine and had not taken
25 Klonopin or Trazodone for some time. (Id.) Rhineland gave
26 Plaintiff a prescription for Darvocet and diagnosed her with facial
27 pain, paresthesia, and "Rule out trigeminal neuralgia." (Id. at
28 336-37.) Rhineland also started Overs on a steroid treatment and

1 referred her back to her primary physician, Dr. Arthur Cardones.
2 (Id.)

3 Over a year later, on October 6, 2008, Plaintiff saw Dr.
4 Albert Nester for her depression and post-traumatic stress
5 disorder. (Id. Attach. #8, 444.) Dr. Nester continued Overs on
6 her current Prozac and Remeron medications. (Id.) When she met
7 with him on November 3, 2008, the doctor observed that the
8 Plaintiff had suffered from increased anxiety and insomnia since
9 her last visit, most likely because she had missed some doses of
10 her Prozac. (Id. at 447.) Overs told Dr. Nester that the Prozac
11 made her feel "sluggish," so the doctor instructed her to split the
12 prescribed dosage and change the time of day that she took it.
13 (Id.) He treated Overs again on December 4, 2008, when he
14 determined that her stress levels appeared "slightly better." (Id.
15 at 449.) On January 8, 2009, Dr. Nester opined that although
16 Plaintiff was "doing ok," her mood was "slightly anxious." (Id. at
17 453.)

18 Dr. Nester completed a "Mental Impairment Questionnaire" on
19 April 7, 2009, when he evaluated Overs's ability to perform work-
20 related activities on a day-to-day basis. (Id. at 474.) He
21 concluded that Plaintiff would be "[u]nable to meet competitive
22 standards" with regard to her ability to do the following:

23 D. Maintain attention and concentration for two hour
24 segments[;]

25 E. Maintain regular attendance and be punctual within
26 customary, usually strict tolerances[;]

27 F. Sustain an ordinary routine without special
28 supervision[;]

G. Work in coordination with or proximity to others
without being unduly distracted[;]

1

2 I. Complete a normal workday and workweek without
3 interruptions from psychologically based symptoms[;]

4

5 K. Accept instructions and respond appropriately to
6 criticism from supervisors[;]

7 L. Interact appropriately with the general public[;]
8 [and]

9 M. Respond appropriately to changes in a routine working
10 setting[.]

11 (Id. at 474-75.)

12 II. THE ADMINISTRATIVE HEARING

13 On April 29, 2009, an administrative hearing was held before
14 Administrative Law Judge ("ALJ") Trembly. (Id. Attach. #2, 24.)
15 Overs, her former attorney, Anthony Delollis, and vocational expert
16 Gloria Lasoff were present. (Id.) Judge Trembly heard testimony
17 from Plaintiff and her attorney, but not from the vocational
18 expert. (Id. at 24-42.)

19 Overs's counsel testified that one of Plaintiff's most
20 disabling impairments was her trigeminal neuralgia because it caused
21 her to suffer from disabling and painful headaches on a daily
22 basis. (Id. at 27.) Counsel further stated that Overs's myotonia
23 caused muscle cramping in her hands, feet, and legs. (Id.)
24 Finally, Plaintiff's PTSD stemming from her history of sexual
25 trauma caused her to become a "shut-in" and fearful of venturing
26 into public without her husband. (Id. at 27-28.)

27 The Plaintiff testified about her history of sexual abuse. As
28 a child, she was molested by a teacher and a neighbor. (Id. at 29,
32.) She was later raped by police officers and sexually assaulted
by a former coworker. (Id. at 29-32.) Overs submitted that her

1 myotonia caused constant pain and left her unable to sit or stand
2 for extended periods of time. (Id. at 32-33.) Her trigeminal
3 neuralgia made her nauseous and impaired her ability to read. (Id.
4 at 33.) Judge Trembly questioned Plaintiff about her prior jobs at
5 a daycare, a preschool, and a bakery. (Id. at 34-37.) The ALJ
6 noted that Overs had worked during the 1970's and 1980's, and
7 consistently from 1995 to 2006. (Id. at 37.) In 1987, the year
8 she was raped by the police officers, she earned almost \$12,000.00.
9 (Id.)

10 III. APPLICABLE LEGAL STANDARDS

11 A. Generally

12 To qualify for disability benefits under the Social Security
13 Act, an applicant must show two things: (1) He or she suffers from
14 a medically determinable impairment that can be expected to last
15 for a continuous period of twelve months or more, or would result
16 in death; and (2) the impairment renders the applicant incapable of
17 performing the work that he or she previously performed or any
18 other substantially gainful employment that exists in the national
19 economy. See 42 U.S.C.A. §§ 423(d)(1)(A), (2)(A) (West Supp.
20 2010). An applicant must meet both requirements to be classified
21 as "disabled." Id.

22 Sections 205(g) and 1631(c)(3) of the Social Security Act
23 allow applicants whose claims have been denied by the Social
24 Security Administration to seek judicial review of the
25 Commissioner's final agency decision. Id. §§ 405(g), 1383(c)(3).
26 The district court may affirm, modify, or reverse the
27 Commissioner's decision. Id. § 405(g). The court should affirm
28 the decision unless "it is based upon legal error or is not

1 supported by substantial evidence." Bayliss v. Barnhart, 427 F.3d
2 1211, 1214 n.1 (9th Cir. 2005) (citing Tidwell v. Apfel, 161 F.3d
3 599, 601 (9th Cir. 1999)). The district court may also remand the
4 matter to the Social Security Administration for further
5 proceedings. 42 U.S.C.A. § 405(g).

6 **B. Treating Physicians**

7 The administrative law judge must consider all medical opinion
8 evidence. 20 C.F.R. § 404.1527(b) (2011). According to the
9 regulations, a treating physician's opinion must be given
10 controlling weight if it is "well-supported by medically acceptable
11 clinical and laboratory diagnostic techniques and . . . not
12 inconsistent with the other substantial evidence in [the] case
13 record" Id. § 404.1527(d)(2). If the treating physician's
14 opinion is not given controlling weight, the following factors are
15 examined to determine what weight to give the opinion: (1) the
16 length of the treatment relationship and the frequency of
17 examination, (2) the nature and extent of the treatment
18 relationship, (3) the supportability of the opinion, (4) the
19 consistency of the opinion with the record as a whole, (5) the
20 specialization of the treating physician, and (6) any other factors
21 brought to the attention of the ALJ which tend to support or
22 contradict the opinion. Id. § 404.1527(d)(2)(i)-(ii), (d)(3)-(6).

23 Opinions of treating physicians may only be rejected under
24 certain circumstances. See Batson v. Comm'r of Soc. Sec. Admin.,
25 359 F.3d 1190, 1195 (9th Cir. 2004). "Cases in [the Ninth Circuit]
26 distinguish among the opinions of three types of physicians: (1)
27 those who treat the claimant (treating physicians); (2) those who
28 examine but do not treat the claimant (examining physicians); and

(3) those who neither examine nor treat the claimant (nonexamining physicians)." Lester v. Chater, 81 F.3d 821, 830 (9th Cir. 1995) (footnote omitted).

The standard for determining whether an ALJ properly rejected the opinion of a treating physician varies. If the treating doctor's determination is not contradicted by another doctor, the ALJ must give clear and convincing reasons for rejecting the uncontradicted opinion. Thomas v. Barnhart, 278 F.3d 947, 957 (9th Cir. 2002); see also Spelatz v. Astrue, 321 F. App'x 689, 692 (9th Cir. 2009); Lester, 81 F.3d at 830. On the other hand, if the treating physician's conclusion is contradicted by another doctor, "the ALJ must [resolve the conflict and] give specific, legitimate reasons for disregarding the opinion of the treating physician." Batson, 359 F.3d at 1195 (quoting Matney v. Sullivan, 981 F.2d 1016, 1019 (9th Cir. 1992)); see also Lingenfelter v. Astrue, 504 F.3d 1028, 1042 (9th Cir. 2007). An ALJ may discredit opinions "that are conclusory, brief, and unsupported by . . . objective medical findings." Batson, 359 F.3d at 1195. Although a treating physician's opinion is given the most weight, an opinion on the ultimate issue -- disability -- is not binding on an ALJ. Tonapetyan v. Halter, 242 F.3d 1144, 1148 (9th Cir. 2011).

C. Remand for Further Proceedings

A district court may remand a Social Security disability decision under sentence four of 42 U.S.C. § 405(g). Hoa Hong Van v. Barnhart, 483 F.3d 600, 605 (9th Cir. 2007). That provision states, "The court shall have power to enter, upon the pleadings and transcript of the record, a judgment affirming, modifying, or reversing the decision of the Commissioner of Social Security, with

1 or without remanding the cause for a rehearing." 42 U.S.C.A. §
2 405(g). "A sentence-four remand is essentially a determination
3 that the Commissioner erred in denying benefits." Havrylovich v.
4 Astrue, No. 09-1113-HA, 2011 U.S. Dist. LEXIS 7187, at *19 (D. Or.
5 Jan. 25, 2011) (citing Hoa Hong Van, 483 F.3d at 605). After a
6 case is remanded and an additional hearing is held, the
7 Commissioner may modify or affirm the original findings of fact or
8 the decision. 42 U.S.C.A. § 405(g).

9 A remand to the Commissioner for further proceedings or to
10 award benefits is within the court's discretion. McAllister v.
11 Sullivan, 888 F.2d 599, 603 (9th Cir. 1989). "'If additional
12 proceedings can remedy defects in the original administrative
13 proceedings, a social security case should be remanded. Where,
14 however, a rehearing would simply delay receipt of benefits,
15 reversal [and an award of benefits] is appropriate.'" Id. (quoting
16 Lewin v. Schweiker, 654 F.2d 631, 635 (9th Cir. 1981)). "[T]he
17 proper course, except in rare circumstances, is to remand to an
18 administrative agency for additional investigation or explanation."
19 INS v. Ventura, 537 U.S. 12, 16 (2002).

20 IV. DISCUSSION

21 In her Motion for Summary Judgment, Plaintiff asks the Court
22 to reverse the Commissioner's final decision and remand the case
23 for an award of benefits or further proceedings. (Mot. Summ. J.
24 Attach. #1 Mem. P. & A. 12, ECF No. 8.) First, Plaintiff alleges
25 that the ALJ erred because he did not consider the opinion of
26 Overs's treating physician, Dr. Nester. (Id. at 6-7.) Second,
27 Plaintiff maintains that Judge Trembly's finding that Plaintiff can
28 do other work is not supported by substantial evidence. (Id. at 7-

1 8.) Third, she alleges that the ALJ erred in relying on the "grid
2 rules." (Id. at 8-9.) Fourth, according to Overs, the judge
3 failed to consider a letter written by Plaintiff's husband. (Id.
4 at 9-10.) Finally, Judge Trembly improperly found that Overs was
5 not credible. (Id. at 10-11.) The Plaintiff argues that the Court
6 should reverse the final decision and remand the case for the
7 payment of benefits. (Id. at 12.) She contends that Dr. Nester's
8 opinion should be "accepted as a matter of law." (Id.)

9 In his Motion for Remand, Defendant concedes that the ALJ's
10 finding that Overs was not disabled at step five was not supported
11 by substantial evidence. (Mot. Remand Attach. #1 Mem. P. & A. 2
12 n.1, ECF No. 9.) "Defendant asked Plaintiff to stipulate to remand
13 this matter for further proceedings." (Id.) But at the time the
14 Motion to Remand was filed on February 23, 2012, Plaintiff had not
15 agreed to join in a motion to remand. (Id.) Defendant argues
16 that, nonetheless, remand is appropriate for consideration of the
17 medical source opinions. (Id. at 2.)

18 "Administrative law judges are responsible for reviewing the
19 evidence and making findings of fact and conclusions of law." 20
20 C.F.R. § 404.1527(f)(2). Conflicts in the evidence should be
21 resolved by the Commissioner, not the courts. See Laffoon v.
22 Califano, 558 F.2d 253, 254 (5th Cir. 1977); see also, Sprague v.
23 Bowen, 812 F.2d 1226, 1230 (9th Cir. 1987). The ALJ is the final
24 arbiter of ambiguities in the medical evidence. Tommasetti v.
25 Astrue, 533 F.3d 1035, 1041-42 (9th Cir. 2008). The Commissioner's
26 decision must be upheld when the evidence would support more than
27 one rational interpretation. Havrylovich, 2011 U.S. Dist. LEXIS
28 7187, at *4 (citing Thomas, 278 F.3d at 954).

1 The Ninth Circuit has articulated the standard district courts
2 must apply when deciding whether to remand a matter for further
3 proceedings:

4 Remand for further administrative proceedings is
5 appropriate if enhancement of the record would be useful.
6 Conversely, where the record has been developed fully and
7 further administrative proceedings would serve no useful
8 purpose, the district court should remand for an
9 immediate award of benefits. More specifically, the
10 district court should credit evidence that was rejected
11 during the administrative process and remand for an
immediate award of benefits if (1) the ALJ failed to
provide legally sufficient reasons for rejecting the
evidence; (2) there are no outstanding issues that must
be resolved before a determination of disability can be
made; and (3) it is clear from the record that the ALJ
would be required to find the claimant disabled were such
evidence credited.

12 Benecke v. Barnhart, 379 F.3d 587, 593 (9th Cir. 2004) (citations
13 omitted); see Strauss v. Comm'r of Soc. Sec. Admin., 635 F.3d 1135,
14 1138 (9th Cir. 2011) (applying the standard outlined in Benecke).
15 "A claimant is not entitled to benefits under the statute unless
16 the claimant is, in fact, disabled, no matter how egregious the
17 ALJ's errors may be." Strauss, 635 F.3d at 1138.

18 **A. Failure to Consider Dr. Nester's Opinion**

19 Plaintiff initially contends that the ALJ improperly ignored
20 the opinion of Overs's treating physician, Dr. Nester. (Mot. Summ.
21 J. Attach. #1 Mem. P. & A. 6, ECF No. 8.) The doctor opined that
22 Plaintiff was unable to meet competitive standards in several work
23 areas but the ALJ did not weigh, or even mention, Dr. Nester's
24 opinion. (Id.) Because the treating physician's opinion was not
25 adequately rejected, it should be accepted as a matter of law and
26 the case should be remanded for an award of benefits. (Id. at 7.)

27 Astrue concedes that the ALJ should have discussed Dr.
28 Nester's opinion and articulated the reasons for rejecting it.

1 (Mot. Remand Attach. #1 Mem. P. & A. 2-3, ECF No. 9.) He argues
2 that remand is the appropriate remedy, not an award of benefits.
3 (Id. at 3.) On remand, Defendant asks for an instruction to
4 consider Dr. Nester's opinion and articulate specific and
5 legitimate reasons for rejecting the opinion, if appropriate.
6 (Id.) The Commissioner also seeks an instruction to reassess
7 Overs's residual functional capacity and obtain vocational expert
8 testimony on what jobs exist for Plaintiff in light of her age,
9 education, residual functional capacity, and other vocational
10 factors. (Id.)

11 In his decision, the ALJ determined that Plaintiff was
12 impaired with myotonia, trigeminal neuralgia, and post-traumatic
13 stress disorder. (Admin. R. Attach. #2, 16, ECF No. 6.) Overs did
14 not have an impairment that meets one of the listed impairments.
15 (Id. at 17.) Judge Trembly further concluded that after
16 considering the entire record, Plaintiff had the RFC to perform
17 light work, but she was limited to simple, repetitive tasks in a
18 nonpublic work environment. (Id.) The ALJ found that there were
19 jobs that existed in significant numbers that Overs could perform.
20 (Id. at 22.)

21 Dr. Nester treated the Plaintiff on October 6, November 3,
22 December 4, 2008, and January 8, 2009. (Id. Attach. #8, 444, 447,
23 449, 453.) Dr. Nester, opined on April 7, 2009, that Overs was
24 "[u]nable to meet competitive standards" for concentration and
25 punctuality, sustaining an unsupervised routine, working with
26 others, completing a normal work week, accepting criticism,
27 interacting with others, and responding appropriately to changes in
28 a work setting. (Id. at 474-75.) The opinion by Dr. Nester, a

1 treating physician, that Overs was unable to meet competitive
2 standards in several work areas is inconsistent with, for example,
3 treating physician Dr. Eriks's finding that Plaintiff had no
4 visual, communicative, or environmental limitations. (See Admin.
5 R. Attach. #8, 300, 474-75, ECF No. 6.)

6 As discussed, to reject the opinion of an examining or a
7 treating physician that is contradicted by other medical opinions,
8 the ALJ is required to give specific and legitimate reasons for
9 doing so. See Batson, 359 F.3d at 1195; Lester, 81 F.3d at 830-31.
10 Conflicts in the medical evidence are resolved by the Commissioner.
11 Sprague, 812 F.2d at 1230.

12 Judge Trembly gave no reasons for rejecting Dr. Nester's
13 opinion that Overs could not adequately concentrate, attend work
14 regularly, or complete a workday without interruptions. See
15 Strauss, 635 F.3d at 1138. There may or may not be evidence in the
16 record that the ALJ can rely on to render the required "specific"
17 and "legitimate" reasons for disregarding Dr. Nester's opinions;
18 regardless, the ALJ is in a better position to perform the task
19 than this Court. See McAllister, 888 F.2d at 603; Gonzalez v.
20 Sullivan, 914 F.2d 1197, 1201 (9th Cir. 1990) ("We are wary of
21 speculating about the basis of the ALJ's conclusion"). The
22 Administration should address the outstanding issues before making
23 a decision as to Overs's disability. But see Strauss, 635 F.3d at
24 1138; see also Benecke, 379 F.3d at 595 (explaining that allowing
25 the ALJ on remand to decide and again explain his reasons for
26 discrediting the treating and examining doctors' opinions "would
27 create an unfair 'heads we win; tails, let's play again' system of
28 disability benefits adjudication[]"). Here, it is not clear from

1 the record that ALJ Trembly would be required to find Plaintiff
2 Overs disabled if Dr. Nester's opinion was credited. See Strauss,
3 635 F.3d at 1138.

4 In light of Judge Trembley's failure to articulate specific
5 and legitimate reasons for rejecting Dr. Nester's opinion that
6 Overs was unable to meet competitive standards in several areas,
7 the matter should be remanded to allow Judge Trembly to explain his
8 reasons for doing so. See id. Springer, 1996 U.S. App. LEXIS
9 18296, at *8 (upholding the district court's decision to remand to
10 allow the ALJ to explain his reasons for discounting the
11 evaluations of two of the five physicians when it was clear from
12 the record that the medical evidence from the five physicians was
13 conflicting); see also Benecke, 379 F.3d at 594, 594 n.3
14 (concluding that the decision to deny benefits should be reversed
15 because the ALJ gave a lengthy explanation for discrediting the
16 treating physicians' opinions, the reasoning was legally
17 insufficient, the record was fully established, and the evidence
18 compelled a finding of disability); Marquez v. Astrue, No. ED CV
19 09-1921-E, 2010 U.S. Dist. LEXIS 41054, at *7-8 (C.D. Cal. Apr. 27,
20 2010) (applying Harman v. Apfel, 211 F.3d 1172, 1178 (9th Cir.
21 2000), to decide whether reversal or remand is appropriate). In
22 Overs's case, there are outstanding issues that need to be
23 addressed before a disability determination can be made.

24 **B. Error in Applying the Grids**

25 Next, Overs contends that because her impairments are
26 nonexertional, Judge Trembly erred in relying on the medical-
27 vocational rules instead of referring to the expertise of a
28 vocational witness. (Mot. Summ. J. Attach. #1 Mem. P. & A. 8-9,

1 ECF No. 8.) The Plaintiff argues that the ALJ's finding that her
2 limitations did not reduce the occupational base of unskilled light
3 work is not supported by the record. (Id. at 8.) Overs further
4 alleges that without some individualized explanation of what jobs
5 she can perform given her disabilities, the ALJ's determination is
6 not supported by substantial evidence. (Id.) Accordingly,
7 Plaintiff contends the case should be remanded for the ALJ to
8 consider the testimony of a vocational witness. (Id. at 9.)

9 Defendant suggests that, on remand, the Commissioner should be
10 instructed to reassess Overs's RFC and obtain supplemental
11 vocational expert testimony to determine what jobs are available to
12 Plaintiff in light of her age, education, functioning capacity, and
13 various vocational factors. (Mot. Remand Attach. #1 Mem. P. & A.
14 3, ECF No. 9.)

15 An ALJ typically may rely on the grids when the plaintiff's
16 impairments consist of exertional limitations. See Desrosiers v.
17 Sec'y of Health & Human Servs., 846 F.2d 573, 576-77 (9th Cir.
18 1988). When the plaintiff's impairments reflect significant
19 nonexertional limitations, however, "the grids are only a framework
20 and a [vocational expert] must be consulted." Moore, 216 F.3d at
21 870; see also Desrosiers, 846 F.2d at 579 ("If a claimant has an
22 impairment that limits his or her ability to work without directly
23 affecting his or her strength, that claimant is said to have a non-
24 exertional (not strength-related) limitation that is not covered by
25 the grids.") (Pregerson, J. concurring).

26 The grids are inapplicable when the claimant has both
27 exertional and significant nonexertional limitations; then, the ALJ
28 must consult a vocational expert to determine whether jobs for the

1 plaintiff exist in the national economy, despite her impairment.
2 Moore, 216 F.3d at 869-70. In that situation, careful
3 consideration of an individual's RFC is required. See Soc. Sec.
4 Ruling 85-15, 1985 SSR LEXIS 20, at *10 (1985). The ALJ may base a
5 finding of not disabled "on the fact that a claimant can perform
6 some, although not all, . . . work only if such a finding is
7 supported by both the medical evidence and the testimony of a
8 vocational expert." Desrosiers, 846 F.2d at 580. To better assess
9 the plaintiff's prospects for work, the ALJ should give the
10 vocational expert a hypothetical or series of hypothetical
11 scenarios that take into account all the claimant's limitations and
12 restrictions. Valentine v. Comm'r of Soc. Sec. Admin., 574 F.3d
13 685, 690 (9th Cir. 2009). The vocational expert must identify a
14 substantial occupational base to sustain a finding of not disabled.
15 See Soc. Sec. Ruling 85-15, 1985 SSR LEXIS 20, at *8 ("If, despite
16 the nonexertional impairment(s), an individual has a large
17 potential occupational base, he or she would ordinarily not be
18 found disabled in the absence of extreme adversities in age,
19 education, and work experience.").

20 Although vocational expert Gloria Lasoff appeared at Over's
21 administrative hearing, Lasoff did not testify. (Admin. R. Attach.
22 #2, 24-42, ECF No. 6.) As previously noted, Judge Trembly
23 determined that Plaintiff was impaired with myotonia, trigeminal
24 neuralgia, and post-traumatic stress disorder. (Id. at 16.) He
25 then concluded that Overs had the capacity to perform light work,
26 limited to simple, repetitive tasks in a nonpublic work
27 environment. (Id. at 17.) Judge Trembly's determination that she
28 was limited to "light work" necessitates a finding that Plaintiff

1 suffered from some exertional impairments. See 20 C.F.R. §
2 404.1567 ("To determine the physical exertion requirements of work
3 in the national economy, we classify jobs as sedentary, light,
4 medium, heavy, and very heavy.") Additionally, the conclusion that
5 Overs had post-traumatic stress disorder necessitates a finding
6 that she also had nonexertional impairments. See 20 C.F.R. §
7 404.1569a(c) (2012) (listing nervousness, anxiety and depression as
8 nonexertional limitations); Holohan v. Massanari, 246 F.3d 1195,
9 1208-09 & n.12 (9th Cir. 2001) (nothing that psychiatric
10 impairments are nonexertional limitations). Thus, ALJ Trembly
11 determined that Overs suffered from both exertional and
12 nonexertional limitations.

13 "[T]he fact that a non-exertional limitation is alleged does
14 not automatically preclude application of the grids." Desrosiers,
15 846 F.2d at 577. Rather, the ALJ must first determine whether a
16 claimant's "non-exertional limitations significantly limit the
17 range of work permitted by his exertional limitations." Id.
18 (citations omitted). If so, the guidelines would be inapplicable.
19 Id. Here, the ALJ did not address why Plaintiff's nonexertional
20 limitations did not significantly limit her functional capacity,
21 thus making a vocational expert unnecessary. See id. In light of
22 Judge Trembly's failure to articulate any basis for failing to
23 consult with a vocational expert, the matter should be remanded to
24 permit him to explain his reasons for doing so or to obtain
25 supplemental vocational expert testimony. Holohan, 246 F.3d at
26 1208-09, 1211 (remanding the case when ALJ improperly relied solely
27 on the medical-vocational guidelines with no vocational expert
28 testimony).

1 **C. Failure to Consider the Letter from Mark Overs**

2 The Plaintiff also argues that ALJ Trembly improperly
 3 disregarded a letter written by Overs's husband, Mark Overs, that
 4 was attached to the administrative record. (Mot. Summ. J. Attach.
 5 #1 Mem. P. & A. 9, ECF No. 8.) In support of Plaintiff's
 6 application for benefits, her husband wrote a letter describing
 7 Plaintiff's limitations. (Admin. R. Attach. #8, 470-71, ECF No.
 8 6.) He discussed her lack of memory and concentration, mood
 9 swings, and habit of humming during difficult moments. (Id.)
 10 Plaintiff argues that the ALJ improperly did not discuss the
 11 letter. (Mot. Summ. J. Attach. #1 Mem. P. & A. 9-10, ECF No. 8.)
 12 She contends that the ALJ must consider observations from
 13 nonmedical sources about how a claimant's impairments impact her
 14 ability to work. (Id. at 9.) Defendant does not address this
 15 issue in his Motion for Remand. (See generally Mot. Remand Attach.
 16 #1 Mem. P. & A. 1-4, ECF No. 9.)

17 An ALJ may consider lay witness testimony to determine the
 18 severity of a claimant's impairments and how the impairments affect
 19 his ability to work. 20 C.F.R. §§ 404.1513(d)(4), (e),
 20 416.913(d)(4), (e) (2012); Stout v. Comm'r, 454 F.3d 1050, 1053
 21 (9th Cir. 2006); Smolen v. Chater, 80 F.3d 1273, 1288 (9th Cir.
 22 1996). "Descriptions by friends and family members in a position
 23 to observe a claimant's symptoms and daily activities have
 24 routinely been treated as competent evidence." Sprague v. Bowen,
 25 812 F.2d at 1232; see also Bojarski v. Astrue, No. C09-0833-MAT,
 26 2010 U.S. Dist. LEXIS 24081, at *24-34 (W.D. Wash. Feb. 25, 2010)
 27 (discussing numerous letters submitted by plaintiff's friends and
 28 family members and determining that the ALJ erred in failing to

1 provide germane reasons for rejecting statements made in the
2 letters). Lay witness testimony by friends and family members who
3 have observed a claimant on a daily basis "constitutes qualified
4 evidence" that the ALJ must consider. Sprague, 812 F.2d at
5 1231-32; see Smolen, 80 F.3d at 1289 (noting that testimony from
6 lay witnesses who see the plaintiff on a daily basis and are often
7 family members is particularly valuable); Dodrill v. Shalala, 12
8 F.3d 915, 919 (9th Cir. 1993) ("An eyewitness can often tell
9 whether someone is suffering or merely malingering . . . this is
10 particularly true of witnesses who view the claimant on a daily
11 basis"). The ALJ may discount the testimony of lay
12 witnesses only for "reasons that are germane to each witness."
13 Dodrill, 12 F.3d at 919; see Regennitter v. Comm'r, 166 F.3d 1294,
14 1298 (9th Cir. 1999).

15 Judge Trembly did not reference Mark Overs's letter in his
16 opinion. (See generally Admin. R. Attach. #2, 14-23, ECF No. 6.)
17 The ALJ failed to provide specific reasons, germane to Mark Overs,
18 for discounting his statements about his wife's impairments. See
19 Dodrill, 12 F.3d at 919. Further proceedings would be useful
20 because the record is unclear as to whether the ALJ would be
21 required to find Plaintiff disabled if he had properly considered
22 Mark Overs's letter. Accordingly, remand is warranted to address
23 the letter from Plaintiff's husband. See Paap v. Astrue, No. 3:10-
24 CV-6303-HZ, 2012 U.S. Dist. LEXIS 25417, at *21-23, 36-37 (D. Or.
25 Feb. 28, 2012) (granting remand for failure to articulate reasons
26 for rejecting lay witness statements made by a friend of claimant);
27 see also Petite v. Astrue, No. ED CV 09-1347-PLA, 2010 U.S. Dist.
28 LEXIS 54009, at *21-27 (C.D. Cal. June 1, 2010) (remanding for

1 failure to provide reasons for discounting testimony of claimant's
2 wife); Bojarski, 2010 U.S. Dist. LEXIS 24081, at *33-34.

3 **D. Credibility Determination**

4 Finally, Plaintiff argues that the ALJ's finding that Overs
5 was not credible is not supported by clear and convincing evidence.
6 (Mot. Summ. J. Attach. #1 Mem. P. & A. 11, ECF No. 8.) Overs
7 contends that the ALJ failed to provide specific reasons for
8 finding that Plaintiff was not credible. (Id.) Further, she
9 argues that Judge Trembly was "obsessed" with her failure to follow
10 the treatment regime prescribed by her physicians, but Overs was
11 in continuous treatment from January 2007 to April 2009. (Id.)
12 The Defendant does not address this issue in his Motion for Remand.
13 (See generally Mot. Remand Attach. #1 Mem. P. & A. 1-4, ECF No. 9.)

14 "In order for the ALJ to find [claimant's] testimony
15 unreliable, the ALJ must make 'a credibility determination with
16 findings sufficiently specific to permit the court to conclude that
17 the ALJ did not arbitrarily discredit claimant's testimony.'"
18 Turner v. Comm'r of Soc. Sec. Admin., 613 F.3d 1217, 1224 (9th Cir.
19 2010) (quoting Thomas, 278 F.3d at 958). In evaluating the
20 credibility of a plaintiff's testimony regarding subjective pain,
21 the adjudicator must engage in a two-step analysis. Vasquez v.
22 Astrue, 572 F.3d 586, 591 (9th Cir. 2009) (citing Lingenfelter, 504
23 F.3d at 1035-36); see Batson, 359 F.3d at 1196. "'First, the ALJ
24 must determine whether the claimant has presented objective medical
25 evidence of an underlying impairment which could reasonably be
26 expected to produce the pain or other symptoms alleged.'" Vasquez,
27 572 F.3d at 591 (quoting Lingenfelter, 504 F.3d at 1036). Second,
28 if the claimant satisfies the first step and there is no evidence

1 of malingering, the ALJ may reject the claimant's testimony about
2 the severity of the symptoms if he gives "'specific, clear and
3 convincing reasons'" for doing so. Id. (quoting Lingenfelter, 504
4 F.3d at 1036); Smolen, 80 F.3d at 1283-84.

5 Here, Judge Trembly initially determined that Overs's
6 impairments "could reasonably be expected to cause the alleged
7 symptoms" (Admin. R. Attach. #2, 21, ECF No. 6.) Neither
8 the Plaintiff nor the Defendant challenges this conclusion. The
9 first prong of the ALJ's inquiry regarding Plaintiff's credibility
10 is therefore satisfied. See Vasquez, 572 F.3d at 591. The issue,
11 then, is whether Judge Trembly provided clear reasons for the
12 adverse credibility finding that are supported by the evidence in
13 the record.

14 The Commissioner's reasons for rejecting a claimant's
15 testimony must be "clear and convincing." Reddick v. Charter, 157
16 F.3d 715, 722 (9th Cir. 1998) (quoting Lester, 81 F.3d at 834). To
17 support a finding that the plaintiff was not credible, the ALJ must
18 "'point to specific facts in the record that demonstrate that [the
19 plaintiff] is in less pain than she claims.'" Vasquez, 572 F.3d at
20 592 (quoting Dodrill, 12 F.3d at 918). The ALJ must make specific
21 findings "stat[ing] which pain testimony is not credible and what
22 evidence suggests the complaints are not credible." Dodrill, 12
23 F.3d at 918. A reviewing court should not be forced to speculate
24 as to the grounds for an administrative law judge's rejection of a
25 plaintiff's allegations of disabling pain. Bunnell v. Sullivan,
26 947 F.2d 341, 346 (9th Cir. 1991) (citing Murray v. Heckler, 722
27 F.2d 499, 502 (9th Cir. 1983)); see also Steele v. Barnhart, 290
28 F.3d 936, 941 (7th Cir. 2002) (explaining that the ALJ must build

1 an accurate and logical connection between the evidence and the
2 decision).

3 In general, questions of credibility are for the ALJ to
4 resolve. Sample v. Schweiker, 694 F.2d 639, 642 (9th Cir. 1982).
5 Courts should not "second-guess" an ALJ's credibility
6 determinations. Allen v. Heckler, 749 F.2d 577, 580 (9th Cir.
7 1984). If the evidence is conflicting and could be rationally
8 interpreted more than one way, the court must uphold the ALJ's
9 decision. Id. at 579.

10 Social Security Ruling 96-7p provides the relevant standard:

11 4. In determining the credibility of the individual's
12 statements, the adjudicator must consider the entire case
13 record, including the objective medical evidence, the
14 individual's own statements about symptoms, statements and
15 other information provided by treating or examining physicians
16 or psychologists and other persons about the symptoms and how
17 they affect the individual, and any other relevant evidence in
18 the case record. An individual's statements about the
19 intensity and persistence of pain or other symptoms or about
20 the effect the symptoms have on his or her ability to work may
21 not be disregarded solely because they are not substantiated
22 by objective medical evidence.

23 5. It is not sufficient for the adjudicator to make a
24 single, conclusory statement that 'the individual's
25 allegations have been considered' or that 'the
26 allegations are (or are not) credible.' It is also not
27 enough for the adjudicator simply to recite the factors
28 that are described in the regulations for evaluating
symptoms. The determination or decision must contain
specific reasons for the finding on credibility,
supported by the evidence in the case record, and must be
sufficiently specific to make clear to the individual and
to any subsequent reviewers the weight the adjudicator
gave to the individual's statements and the reasons for
that weight.

25 Soc. Sec. Ruling 96-7p, 1996 SSR LEXIS 4, at *2-4.

26 The Ninth Circuit has articulated the grounds on which an ALJ
27 may properly decide to discredit a claimant's testimony:

28 In weighing a claimant's credibility, the ALJ may
consider [claimant's] reputation for truthfulness,

inconsistencies either in his testimony or between his testimony and his conduct, his daily activities, his work record, and testimony from physicians and third parties concerning the nature, severity, and effect of the symptoms of which he complains.

Light v. Comm'r of Soc. Sec. Admin., 119 F.3d 789, 792 (9th Cir. 1997) (citations omitted). Where the ALJ's credibility assessment is supported by substantial evidence, it will not be disturbed even where some of the reasons for discrediting a claimant's testimony were improper. Tonapetyan, 242 F.3d at 1148; see Carmickle v. Comm'r of Soc. Sec. Admin., 533 F.3d 1155, 1163 (9th Cir. 2008).

Here, Judge Trembly listed ten reasons for finding that Plaintiff was not fully credible:

However, to the extent that it is alleged that the claimant cannot perform work at the residual functional capacity as recited above, the Administrative Law Judge finds those allegations are not totally credible for the following clear and convincing reasons.

First, the claimant's activities of daily living include; independently caring for her own personal hygiene; cooking; cleaning; shopping; and driving a vehicle (Exhibit 8F). These activities did not indicate a disabling level of impairment of the claimant's residual functional capacity.

Second, during the January 25, 2007, psychiatric evaluation at the San Diego County Psychiatric Hospital emergency department, by Dr. Kang, it was noted that the claimant was not currently taking any prescription medication for any impairment. This is not consistent with a disabling level of impairment. **Third**, it was also noted during the January 25, 2007, evaluation, by Dr. Kang, that the claimant was referred for outpatient psychiatric treatment; however, based on her subsequent psychiatric assessment at the San Diego County Mental Health Services on March 14, 2007, she never pursued outpatient treatment and she just took the prescribed medication for four weeks and then discontinued it. The Regulations state, "in order to get benefits you must follow the prescribed treatment, if you do not follow the prescribed treatment without a good reason, we will not find you disabled" (20 CFR 404.1530 and 416.930). Since there were no allowable reasons offered for discontinuing the prescribed medication and for not following up with the outpatient mental health treatment, the claimant cannot be denied benefits based on this regulation.

Fourth, during the March 14, 2007, evaluation at the San Diego County Psychiatric Center, the claimant reported that she never had any formal psychiatric treatment, never been psychiatrically hospitalized, and she denied suicide attempts. **Fifth**, it was also noted during the March 14, 2007, mental status evaluation that the claimant displayed no significant psychomotor agitation or retardation; she was calm and cooperative in the interview; her thought process was linear, logical and goal-directed; and she denied any hallucinations, suicidal ideation, or homicidal ideation.

Sixth, at the June 29, 2007, consultative internist examination by Dr. Eriks, the claimant reported that she has been on Darvocet in the past for pain, but was not currently on any medications.

Seventh, Dr. Eriks reported after the June 29, 2007 evaluation, that other than the mild tenderness and slight paraspinous muscle spasm in the lower thoracic spine and mild kyphoscoliosis in the lower thoracic spine and mild kyphoscoliosis in the lower thoracic spine, the remainder of claimant's examination was grossly normal.

Eighth, when the claimant was seen at the Sharp Grossmont Hospital Emergency room on August, 24, 2007, she reported that her prescribed medications included Prozac, Trazadone, Klonopin, and Carbamazepine; however, she had never started taking the Carbamazepine and had not taken the Klonopin or Trazedone for awhile. Again, the claimant can be found "not disabled" for not following prescribed treatment (20 CFR 404.1530 and 416.930).

Ninth, when discussing the claimant's impairments, no physician, neither any of the claimant's treating physicians or a State Agency ever opined that listing level limitations were ever met or equaled. **Tenth**, the objective evidence of the claimant's medical record does not establish impairments likely to produce disabling pain or other limitations as alleged for any period of 12 or more continuous months.

After careful consideration of the evidence, the undersigned finds that the claimant's medically determinable impairments could reasonably be expected to cause the alleged symptoms; however, the claimant's statements concerning the intensity, persistence and limiting effects of these symptoms are not credible to the extent they are inconsistent with the above residual functional capacity assessment.

(Admin. R. Attach. #2, 20-21, ECF No. 6.) (emphasis in original)

1 Judge Trembly identified numerous instances in which
2 Plaintiff failed to take medications as prescribed or follow a
3 physician-recommended course of treatment. The ALJ noted that
4 at her January 25, 2007 psychiatric evaluation by Dr. Kang,
5 Overs was not taking any prescription medication, which was
6 inconsistent with her alleged disabling pain. (Id. at 20.)
7 Likewise, Plaintiff stated during her June 29, 2007
8 appointment with Dr. Eriks that she was not on any medication.
9 (Id.) Overs also failed to pursue recommended outpatient
10 psychiatric treatment and take her prescribed Carbamazepine
11 medication. (Id. at 20-21.)

12 An ALJ may rely on evidence of a claimant's failure to
13 take medication when questioning the claimant's credibility.
14 Esquivel v. Astrue, No. 5:11-CV-00905 PSG, 2012 U.S. Dist.
15 LEXIS 50481, at *17-18 (N.D. Cal. Apr. 10, 2012) (citing
16 Moncada v. Chate, 60 F.3d 521, 524 (9th Cir. 1995)).
17 "[N]oncompliance with treatment may be a clear and convincing
18 reason for an adverse credibility determination." Kral v.
19 Astrue, No. 1:10-cv-01483 JLT, 2011 U.S. Dist. LEXIS 106642,
20 at *18 (E.D. Cal. Sept. 20, 2011) (citing Fair, 885 F.2d at
21 603); Pharris v. Astrue, No. 1:10-cv-01323 JLT, 2011 U.S.
22 Dist. LEXIS 99485, at *25, (E.D. Cal. Sept. 2, 2011) (same).
23 Judge Trembly properly considered these factors when finding
24 that Overs was not fully credible. The record supports his
25 conclusion.

26 Moreover, the ALJ cited numerous inconsistencies between
27 the Plaintiff's testimony and the evidence in the record. For
28 example, the judge recognized instances where Overs conceded

1 that she was not taking any prescribed medications, which
2 conflicted with her alleged disabling impairments. (Admin. R.
3 Attach. #2, 20, ECF No. 6.) The ALJ also considered that
4 Plaintiff's thought process was "linear, logical and goal-
5 directed" during her March 14, 2007 evaluation. (Id.)
6 Similarly, Overs's June 29, 2007 examination was "grossly
7 normal," which was inconsistent with her complaints. (Id.)

8 "[T]he adjudicator may not discredit a claimant's
9 testimony of pain and deny disability benefits solely because
10 the degree of pain alleged by the claimant is not supported by
11 objective medical evidence." Bunnell, 947 F.2d at 346-47
12 (emphasis added). Nonetheless, "[w]hile subjective pain
13 testimony cannot be rejected on the sole ground that it is not
14 fully corroborated by objective medical evidence, the medical
15 evidence is still a relevant factor in determining the
16 severity of the claimant's pain and its disabling effects."
17 Rollins v. Massanari, 261 F.3d 853, 857 (9th Cir. 2001). As
18 discussed, Judge Trembly properly provided other specific,
19 convincing reasons for discrediting Overs's testimony, such as
20 her failure to take prescribed medications, that are supported
21 by the evidence in the record. His credibility determination
22 was therefore not based solely on inconsistencies between
23 Overs's testimony and objective medical evidence.

24 The ALJ also referred to Plaintiff's activities of daily
25 living to illustrate inconsistencies between her testimony --
26 that she is in pain, is fearful of venturing in public, and
27 cannot sit or stand for extended periods of time -- and her
28 conduct -- cooking, cleaning, shopping, and driving. (Admin.

1 R. Attach. #2, 20, ECF No. 6.) An ALJ may consider the
2 claimant's daily activities and may reject excess pain
3 allegations where the activities contradict the claimant's
4 other testimony. Orn v. Astrue, 495 F.3d 625, 639 (9th Cir.
5 2007). Judge Trembly properly referred to Overs's activities
6 of daily living to illustrate that they were not consistent
7 with Plaintiff's testimony regarding her disabling level of
8 impairment. See id. The record also supports this
9 determination.

10 Nonetheless, Judge Trembly provided multiple specific,
11 detailed bases for his credibility assessment, which are
12 supported by the evidence in the record. Turner, 613 F. 3d at
13 1224.

14 V. CONCLUSION AND RECOMMENDATION

15 Plaintiff's Motion for Summary Judgment [ECF No. 8]
16 should be **GRANTED** in part and **DENIED** in part. Overs's request
17 to remand the matter for further administrative proceedings
18 should be **GRANTED**, but her request for an order reversing the
19 ruling should be **DENIED**. The Defendant's Motion to Remand
20 [ECF No. 9] should be **GRANTED**.

21 This Report and Recommendation will be submitted to the
22 United States District Court Judge assigned to this case,
23 pursuant to the provisions of 28 U.S.C. § 636(b)(1). Any
24 party may file written objections with the Court and serve a
25 copy on all parties on or before July 31, 2012. The document
26 should be captioned "Objections to Report and Recommendation."
27 Any reply to the objections shall be served and filed on or
28 before August 14, 2012. The parties are advised that failure

1 to file objections within the specified time may waive the
2 right to appeal the district court's order. Martinez v. Ylst,
3 951 F.2d 1153 (9th Cir. 1991).

4
5 Dated: July 16, 2012


RUBEN B. BROOKS
United States Magistrate Judge

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7 cc: Judge Hayes
8 All Parties of Record
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